SUPREME COURT, U.S.
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

October Term, 1957

No. 708

FRANK JIMMY SNIDER, JR.
Petitioner

v.

W. FRANK SMYTH, JR.
Superintendent of the Virginia State Penitentiary
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Frank Jimmy Snider, Jr., of Gadsden, Alabama, respectfully prays that a writ of certiorari be issued out of and under the seal of the Court to review the final decision and judgment of the Supreme Court of Appeals of Virginia, rendered on the 9th day of October, 1957, hereinafter set forth and represents as follows:

OPINIONS OF THE COURTS BELOW

On June 27, 1956, in the Hustings Court of the City of Roanoke, Virginia, Frank Jimmy Snider, Jr., was convicted of statutory rape and sentenced to be executed. On November 23, 1956, the Supreme Court of Appeals of Virginia denied an appeal for writ of error.

In February, 1957, Snider petitioned this Honorable Court for a writ of certiorari. The writ was denied on March 25, 1957. Petition to rehear was filed and subsequently denied on May 6, 1957. See *Snider v. Commonwealth of Virginia*____U. S.____, 1 L ed. 2d. 663, 77 S. Ct.____.

We respectfully request the Court to treat and consider as a part of this petition, the former petition filed for certiorari and the brief of the Commonwealth of Virginia filed in opposition to the petition for the writ.

The questions raised in the former petition for the writ of certiorari were not raised in the trial and in Appellate Courts of Virginia. Consequently, in our humble opinion, the writ for certiorari was denied as this Court was not required to decide questions not presented to the Courts below.

Since the denial of the petition for the writ of certiorari, questions vital to Snider's constitutional rights and privileges have been raised in the courts of Virginia.

On July 3, 1957, Snider filed a petition for habeas corpus in the Hustings Court, Part II, of the City of Richmond, Virginia. The petition was denied for the reasons stated in the Court's order and opinion of July 5, 1957. See Appendix I. On July 8, 1957,

Snider filed a supplemental petition for the writ of habeas corpus in said Hustings Court. This petition was denied for the reasons stated in the Court's order and opinion of July 8, 1957. See Appendix II.

On July 9, 1957, the United States District Court for the Eastern District of Virginia, granted a writ of habeas corpus and the execution of Snider was stayed. The Order and Memorandum are presented as Appendix III and Appendix IV, respectively, to this petition. The District Court was of the opinion that Snider's petition was meritorious and presented substantial grounds for consideration by the Courts of Virginia, and the Federal Courts. The District Court required that Snider proceed with an appeal from the judgment of the Hustings Court, Part II, of the City of Richmond, rendered on July 8, 1957, inasmuch as the District Court felt that Snider should exhaust all of his rights and remedies under the Laws of the Commonwealth.

The petition for writ of error and supersedeas before the Supreme Court of Appeals of Virginia on the refusal of the Hustings Court, Part II, of the City of Richmond, to grant petitioner a writ of habeas corpus was denied on the 9th day of October, 1957. See Appendix V. It is from this decision petitioner seeks the issuance of a writ of certiorari.

Snider is in the Virginia State Penitentiary at Richmond, Virginia, under sentence of death. An indefinite stay of execution has been granted petitioner as a result of the action of the United States District Court for the Eastern District of Virginia.

Petitioner here and now states that this petition is addressed to this Honorable Court in lieu of his continuance of this action before the United States

District Court for the Eastern District of Virginia because of the delicate question of interference by inferior Federal Courts with the judgment of Courts of sovereign States. Petitioner further believes that his matter may be expedited by direct application to the Supreme Court of the United States. We also deem it expedient to preserve petitioner's rights by this application for certiorari.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929).

QUESTIONS PRESENTED

Frank Jimmy Snider, Jr., assails the judgment of conviction and he here and now contends that he was denied due process of law and equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States, and Section 8 of the Constitution of Virginia, specifically as follows:

(1) He was denied the right of counsel, in that a reasonable time was not afforded between the time of the assignment of counsel by the Trial Court and the date of trial, for the accustomed incidents of consultation and opportunity of preparation for trial;

(2) There was reason to believe that he was insane or feeble-minded and was put to trial without a determination of his mental condition, as required by the Statutes of Virginia in such cases made and provided.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED AND STATEMENT OF THE CASE

The Constitutional provision and statutes involved are found on Pages 6, 7 and 8 of the petition for writ of certiorari filed in February, 1957, which writ was made a part of the record by the filing of same with the petition for writ of habeas corpus before the Hustings Court, Part II, for the City of Richmond. Further, additional statutes in support of petitioner's position may be found on pages 8, 9 and 10 of the petition for writ of error and supersedeas presented before the Supreme Court of Appeals of Virginia, in July, 1957.

The statement of the case, prior to the filing of the petition for habeas corpus, is fully set out on pages 8, 9, and 10 of the initial petition for a writ of certiorari filed with this Court.

For the sake of brevity and in an attempt not to be redundant, petitioner has respectfully referred this Court to the pages hereinabove set out.

ARGUMENT

I.

(a) Snider was Denied the Right of Counsel of his Own Choosing;

(b) Time was Not Allowed for Proper Consultation and Opportunity of Preparation for Trial.

(a) The brief of the Commonwealth of Virginia filed in opposition to the petition for writ of certiorari to the Supreme Court of Appeals of Virginia, on page 5, contained the following:

"In addition to Mr. Houchins, the petitioner was also represented by Mr. Ludger D. Martin of Gadsden, Alabama, a member of the Alabama Bar. Mr. Martin was counsel of the petitioner's own choosing, from the petitioner's home city in Alabama * * ."

Snider here and now represents that the foregoing statement made by the Commonwealth in its brief is not true. Roy D. McCord, Esq., an Attorney of Gadsden, Alabama, was employed as counsel of his own choosing. See affidavit of petitioner's father, Frank Jimmy Snider, Sr., filed herewith as Appendix VI.

Roy D. McCord has been the Snider family attorney for many years. He had been employed to represent Snider. Ludger D. Martin, Esq., was a young lawyer in McCord's office in Gadsden, Alabama. He was not employed as counsel. In desperation, Martin came to Roanoke only after another trial date had been refused McCord and saw and consulted with Snider for only a few moments before the trial actually began. The affidavit of Snider's father corroborated by the telegram of McCord (Appendix VII) and the affidavit of Martin (Appendix VIII), are most pertinent to the issues of this case and clearly show that Snider was denied his Constitutional rights and privileges. We earnestly ask the Court to painstakingly read the affidavit of Snider's father, the affidavit of Martin and the telegram of McCord. McCord is a man of high repute, capable and experienced in trial work. Had McCord not been told by the law enforcement officer of Virginia that the case would not be tried until some time during the July Term of Court, Snider would have been repre-

sented by counsel of his own choice and his counsel would have had sufficient time to properly prepare petitioner's defense. These rights and privileges were manifestly denied Snider, for he was represented by not only counsel not of his choice, but by Martin, a young and inexperienced attorney, who had arrived at the place of trial only hours before its commencement.

(b) Assistance of counsel means more than mere presence of counsel at the trial of the issue. It means *effective* assistance.

> "It is a general rule that a reasonable time for the preparation of a defendant's case must be allowed between the time of assignment of counsel by the court and the date of trial." *Powell v. Alabama*, 287 U. S. 45, 77 L ed. 158, 53 S. Ct. 55, 84 A.L.R. 527."

This Court has made clear its stand as to the necessity of effective assistance of counsel in a State prosecution for a capital crime. See *Reece v. Georgia*, 350 U. S. 85, 100 L ed. 77, 76 S. Ct. 167.

What we know as lawyers we are not required to forget as Judges. All too well is known by the members of the Bar, as to the time and efforts necessary in the proper and effective preparation of a trial—the initial interview with your client to observe client's personality, mannerisms and narrative; the determination of the strong and weak points of the case; the interview of the witnesses; the investigation of the facts; the preparation of the law; the preparation for expert testimony. The aggregate of these time-consuming aspects must be considered.

Snider, as he stands before this Court in the shadow of the mechanism which fulfills the judgment of extreme penalty states, in no frivolous or false manner, that the most important phase of the preparation of his trial, that is, a full and adequate opportunity of counsel to consult with him and for counsel to absorb the facts and circumstances surrounding the crime for which petitioner stood indicted, was denied.

II

There Was Reason to Believe that Snider was Insane and was Put To Trial Without Determination of His Mental Condition.

Petitioner hereby reiterates the references to the procedings had in the Trial Court pertaining to the appointment of the Commission to examine him and determine his mental condition and the citations to statutes in support of his position set out in the former petitions filed. The offense of which Snider was convicted indicated sexual abnormality. The Legislature of Virginia has sought to protect persons so accused and convicted by exploring their mental condition. See Virginia Code Section 53-278.2 to 53-278.4 inclusive, cited on pages 8 and 9 of the petition filed before the Supreme Court of Appeals of Virginia in July, 1957, for a writ of error and supersedeas.

Only three days elapsed from the impaneling of the jury to try the case and the actual trial of the matter. Within this time a Commission was appointed whose purpose was to ascertain Snider's mental condition and to accordingly, report to the Court its determination. Petitioner submits that the time allowed for the Commission to examine him was grossly

inadequate. This point appears too clear for argument. Further, to this very instant, the Commission's determination is unknown.

As Judge Walter E. Hoffman of the United States District Court for the Eastern District of Virginia noted in his Memorandum in support of the granting of the writ of habeas corpus (Appendix IV, *supra*):

> "The record does not indicate that the physicians appointed by the order of June 22, 1956, ever made any report, verbal or written, to anyone. Nor does the record reveal that the physicians examined petitioner, although it may be fairly presumed that they complied with the order. To whom and what the physicians ascertained is unknown from the record."

With this point the Commonwealth, in its brief in opposition to the writ of certiorari filed, takes no issue.

Thus said this Court in *Chessman v. Teets*, ____ U. S.____, 1 L ed. 2d. 1253, 77 S. Ct. ____:

> "On many occasions this Court has found it necessary to say that the requirements of the Due Process Clause of the Fourteenth Amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution. Evidently it also needs to be repeated that the overruling responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in this case, as in others,

has been made on the eve of execution. We must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because courts, including this Court, were not earlier able to enforce what the Constitution demands. The proponent before the Court is not the petitioner but the Constitution of the United States."

Petitioner here and now contends that he is incarcerated in flagrant violation of his Constitutional right of due process of law and equal protection of the laws.

CONCLUSION

Accordingly, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court or that this Court direct for trial and determination the issues raised in the petition for habeas corpus now pending in the United States District Court for the Eastern District of Virginia, which District Court has decided that petitioner is entitled to a hearing on this matter and further, held the issuance of the writ of habeas corpus in abeyance until Snider had exhausted his rights in the State Courts and for direction by this Court.

Respectfully submitted:

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Roanoke, Virginia
Attorneys for Petitioner

Dated: January 6, 1958.

PROOF OF SERVICE

I, T. W. Messick, an attorney of record for Frank Jimmy Snider, Jr., petitioner herein, depose and say that on the 4th day of January, 1958, I served a copy of the foregoing petition, by mailing the same, with first class postage prepaid, to the following counsel of record:

Kenneth C. Patty,
Supreme Court Building,
Richmond, Virginia,
Attorney General of Virginia

C. E. Cuddy,
Municipal Building,
Roanoke, Virginia,
Attorney for the Commonwealth

Arthur B. Crush, Jr.,
Municipal Building,
Roanoke, Virginia,
Assistant-Attorney for the Commonwealth

T. W. Messick

Subscribed and sworn to before me at Roanoke, Virginia, this 4th day of January, 1958.

Notary Public
Mary B. Hitt
Comm. Mary B. Taylor

My commission expires:
June 13, 1960

APPENDIX I

ORDER OF JULY 5, 1957 OF HUSTINGS COURT PART II, CITY OF RICHMOND, VIRGINIA

The petitioner, Frank Jimmy Snider, Jr., by counsel, heretofore on July 3, 1957, having presented to the Court his Petition for a writ of habeas corpus with respect to the commitment resulting from his trial in the Hustings Court of the City of Roanoke on June 25-27, 1956; the Court doth order the same filed.

And upon a consideration of the Petition the Court being of opinion (1) that in the absence of any allegation of fact tending to show wherein the appointment of counsel to defend the petitioner three days prior to his trial prejudiced his defense in fact, and that such appointment and trial three days later would not constitute a denial of due process of law as a matter of law; and (2) that if the petitioner was insane either at the time of the alleged commission of the offense for which he was tried or was insane at the time of his trial, or if there were any doubt thereof, the failure to plead any such alleged insanity as a defense is a bar to any subsequent attempt to raise the issue by habeas corpus, the issue of sanity or insanity and the failure of the record to show the filing of a commission report thereon not being jurisdictional nor a denial of equal protection of the laws;

Therefore, the Court being of opinion that there has been no sufficient allegation of any violation of federal or state constitutional guarantees, the Court doth deny the petition for a writ of habeas corpus; to which action of the Court the petitioner by counsel objects and excepts.

A Copy, Teste: (s) Chas. D. Purdy, Clerk.

APPENDIX II

ORDER OF JULY 8, 1957 OF HUSTINGS COURT PART II, CITY OF RICHMOND, VIRGINIA

This day came the petitioner, Frank Jimmy Snider, Jr., by counsel, and by leave of Court filed his Supplemental Petition for a Writ of Habeas Corpus herein.

And upon a consideration thereof and the affidavit of Frank J. Snider, Sr., father of the petitioner, it appearing that many of the matters in the affidavit are based upon hearsay; that matters relating to the waiver of extradition of the petitioner from Alabama to Virginia are not pertinent to the question of whether there was a denial of due process of law in the petitioner's trial; that it does not appear that any request was made to the Court for a continuance of the trial;

And the Court being of opinion that the Petition and the Supplemental Petition fail to show probable cause for the issuance of a writ of habeas corpus, the Court doth deny the Petition and Supplemental Petition therefor.

To which action of the Court the petitioner, by counsel, objects and excepts.

A Copy, Teste: (s) Chas. D. Purdy, Clerk.

APPENDIX III
ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

Upon consideration of the verified application for petition for writ of habeas corpus and the supplemental application for same as filed by Frank Jimmy Snider, Jr., together with an examination of the exhibits and affidavits filed herewith, and for reasons stated in a Memorandum this day filed, it is ORDERED

That a writ of habeas corpus shall issue out of this Court directing the respondent, W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, to produce the body of said Frank Jimmy Snider, Jr., in proper person before this Court at Norfolk, Virginia, on the 12th day of August, 1957, at 10:00 a.m.

It is futher ORDERED that in the event the appropriate appeal documents are filed with a Justice of the Supreme Court of Appeals of Virginia, and further time is required for consideration of the merits of said petition for writ of habeas corpus as heretofore filed in the Hustings Court of the City of Richmond—Part 2, this Court will defer action on said writ of habeas corpus pending a final determination by the Supreme Court of Appeals of Virginia, or by the United States Supreme Court in the event the petitioner deems it proper to perfect any appeal or apply for certiorari if adverse action be taken by the Supreme Court of Appeals of Virginia.

(s) Walter E. Hoffman
United States District Judge

Newport News, Virginia
July 9, 1957

APPENDIX IV

MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Petitioner has applied for a writ of habeas corpus to be issued out of this Court against the respondent who is alleged to have the custody of the body of said petitioner. Petitioner is scheduled to die in the electric chair on July 11, 1957.

The facts of this sordid case justify the imposition of such punishment if petitioner's constitutional rights have been protected. On May 13, 1956, petitioner criminally assaulted a nine-year-old female child in Roanoke County, Virginia. He was arrested at his home in Gadsden, Alabama, during the latter part of May and, after waiving extradition, was returned to Virginia. A Special Grand Jury was convened on June 4, 1956, and returned an indictment charging statutory rape. On June 22, 1956, the following order was entered by the state court:

> "It appearing to the court that the defendant, Frank Jimmy Snider, Jr., is unable to employ counsel for his defense, Ransom B. Houchins is appointed to defend the said Frank Jimmy Snider, Jr.
> "Upon the motion of the attorney for the Commonwealth of Virginia, it is ordered that Dr. Chas. M. Irvin and Dr. E. J. Palmer be, and they are hereby, appointed a commission to examine the mental condition of the defendant, Frank Jimmy Snider, Jr."

Three days later, on June 25, 1956, petitioner was brought to trial on his plea of not guilty. The case was concluded on the following day, June 26, 1956, with the jury bringing in a verdict of guilty and imposing the death penalty. The motion to set aside the verdict was heard by the Court on June 27, 1956, and, upon being overruled, the death sentence was imposed.

It appears from the briefs filed in the appellate courts that, while the order designating court-appointed counsel was not entered until three days prior to the trial, the attorney had conferred with the petitioner prior to that time. It further appears that an attorney from Gadsden, Alabama, participated in the trial. The record does not indicate that any request for a continuance was made.

The order appointing the physicians to examine petitioner's mental condition was *presumably* in accordance with Sec. 19-202 of the Code of Virginia, 1950, as amended, which provides:

> "If, prior to the time for trial of any person charged with crime, either the court or attorney for the Commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane or a colony for the feeble-minded is necessary for proper care and observation, the court or the judge thereof may, *after hearing evidence on the subject*, commit such person, if a white person, to any State hospital for the insane best adapted to meet the needs of the case and, if a colored person, to the Central State Hospital, under such limitations as it may order, pending the determination of his mental condition. In any such case the court, in its discretion, may appoint one or more physicians skilled in the diagnosis of in-

sanity, or other qualified physicians, and when any person is alleged to be feeble-minded may likewise appoint persons skilled in the diagnosis of feeble-mindedness, not to exceed three, to examine the defendant before such commitment is ordered, make such investigation of the case as they may deem necessary and *report to the court* the condition of the defendant at the time of their examination. A copy of the complaint or indictment, attested by the clerk, together with the report of the examining commission, including, as far as possible, a personal history, according to the form prescribed by the general board of directors of the State hospitals, shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this section. As used in this section the term 'court' shall be construed to include courts not of record and courts of record."

The record does not indicate that the physicians appointed by the order of June 22, 1956, ever made any report, verbal or written, to anyone. Nor does the record reveal that the physicians examined petitioner, although it may be fairly presumed that they complied with the order. To whom and what the physicians ascertained is unknown from the record. Their testimony was not taken prior to or during the trial, nor, as far as known, at any time thereafter. They have not been produced for cross-examination by defense counsel but they were apparently available. The motion for the appointment of the two physicians was made at the request of the prosecutor three days before trial. No such motion was made by defense counsel.

Under Sec. 19-203 of the Code of Virginia, 1950, it is provided that if a court, in which a person is held for trial, has reasonable ground to doubt the sanity or mentality of such person, the court shall suspend the trial and proceed in accordance with Sec. 19-202, hereinabove quoted, or, in lieu thereof, the court may impanel a jury to inquire into the fact as to the sanity or mentality of the accused. Sec. 19-205 provides for the appropriate procedure before a jury or commission as to the sanity of the accused. The expenses of the examining physician are provided for under Sec. 19-207 and other provisions are made for the determination of sanity after conviction, but before sentence, as well as after sentence, same being contained under Secs. 19-208 and 19-209.

The proper interpretations of these sections of the Code of Virginia dealing with the handling of suspected mental cases involving criminals is one of considerable importance to the Commonwealth of Virginia. Following the petitioner's conviction in the Hustings Court of the City of Roanoke, a petition for certiorari was filed with the Supreme Court of Appeals of Virginia where the same was denied on November 23, 1956. In the interim period, the Governor of Virginia granted a stay of execution. Thereafter, petitioner applied for a writ of certiorari in the United States Supreme Court and said petition was denied on March 25, 1957, the Governor of Virginia having meanwhile granted a further stay for the purpose of perfecting said appeal.

On July 3, 1957, petitioner filed an application for a writ of habeas corpus in the Hustings Court of the City of Richmond—Part 2, said petition being denied on July 5, 1957. On July 8, a supplemental

petition was filed in the same court and denied on the same date.

The petition for a writ of habeas corpus in this court was first presented at Newport News, Virginia, on the afternoon of July 8, 1957. The Court advised counsel for petitioner that it did not appear from said petition that the petitioner had exhausted his State remedies through an appeal from the denial of the writ of habeas corpus by the Hustings Court of the City of Richmond—Part 2. While information had been given to this Court that the Governor of Virginia had declined to grant a further stay pending an appeal from the Hustings Court of the City of Richmond—Part 2, the Court was not satisfied that this was sufficient under the circumstances and advised counsel that no action would be taken by this Court unless and until it affirmatively appeared that the Governor of Virginia had declined to take any further action in the premises. An affidavit having been now submitted as a part of the petition for writ of habeas corpus in this Court to the effect that a further stay of execution was requested of the Governor in order to perfect an appeal from the final decision of the Hustings Court of the City of Richmond—Part 2, it would appear that petitioner has exhausted all State remedies now available to him. If no stay of execution is granted, the matter will become moot on July 11, 1957, when petitioner is executed.

It is well settled that a federal court should not entertain an application for writ of habeas corpus requested by a state prisoner until and unless the State remedies have been exhausted, and these remedies include appropriate action by the highest court of the State as well as a further appeal or application

for certiorari to the Supreme Court of the United States. There are, however, exceptional circumstances which justify the right of a district court to entertain an application of this type. In *Darr v. Burford, 339 U. S. 200,* at page 218, it is stated that where extraordinary instances occur which require disregard of the accustomed procedure, the district court may act in a case of peculiar urgency.

A further delay to permit the Supreme Court of Virginia and the United States Supreme Court to interpret the provisions of the statutes referred to herein will impose no hardship upon any one, other than the petitioner himself, who is asking for relief. While the briefs on the direct appeal from the merits of the case do raise some of the questions now presented by the petition for writ of habeas corpus filed in the Hustings Court of the City of Richmond—Part 2, as well as in this court, the Supreme Court of Appeals of Virginia was not necessarily required to take cognizance of these points as they were not raised in the trial court. By the same token, the United States Supreme Court was not required to take action on questions not raised at the time of trial. The petitioner is entitled to a hearing on these questions, and as it appears that all other available remedies have been exhausted and that circumstances of peculiar urgency exist, the Court will issue a writ of habeas corpus returnable to this Court directing the production of the body of Frank Jimmy Snider, Jr., in proper person on the 12th day of August, 1957, at 10:00 a.m., in Norfolk, Virginia, or at such time thereafter as counsel for the respective parties may agree.

This Court recognizes that it has no right to peremp the jurisdiction of the State court in this pro-

ceeding and suggests that if the petitioner files the appropriate petition before the Supreme Court of Appeals of Virginia on or before the 30th day of July, 1957, and should a Justice of that Court suggest that further time is required to consider of the merits of said petition, this Court will delay action on the petition for writ of habeas corpus pending a final determination by the Supreme Court of Appeals of Virginia.

(s) Walter E. Hoffman
United States District Judge

Richmond, Virginia
July 9, 1957

APPENDIX V

OPINION OF SUPREME COURT OF APPEALS OF VIRGINIA RENDERED OCTOBER 9, 1957

The petition of Frank Jimmy Snider, Jr., for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 8th day of July, 1957, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Hustings Court.

A copy, Teste:
(s) H. G. Turner
Clerk

APPENDIX VI

AFFIDAVIT OF FRANK J. SNIDER, SR.

Dated July 6, 1957

STATE OF VIRGINIA, AT LARGE, to wit:

This day personally appeared before me, C. Overton Lee, notary public for the State of Virginia at large, whose commission expires February 1, 1958, the within deponent, FRANK J. SNIDER, SR., at Room 1148, John Marshall Hotel, Richmond, Virginia, at 6:15 p.m., July 6, 1957, and after being first duly sworn by me, made oath to the following:

My name is Frank J. Snider, Sr., and I am now in the City of Richmond, Virginia; I reside in Gadsden, Alabama, which is approximately 550 miles from Roanoke, Virginia.

I am the father of Frank J. Snider, Jr. I am a laboring man, molder by trade; I am employed by Peerless Pipe Foundry of Alabama. I am a poor man. I live with my wife in Gadsden. We have raised two sons. My oldest son is named James Wilburn Snider who resides in Detroit, Michigan, and he is a structural steel worker.

My son, Frank Jimmy Snider, Jr., is twenty-nine years old. He is married and has two small children: a son aged seven years and a daughter aged two and a half years. Since Frank's arrest in May of 1956, I have helped provide for the support and maintenance of his family.

Mr. Roy D. McCord, attorney of Gadsden, Alabama, has been our family attorney for approximately thirty years. Mr. McCord's father was an attorney

and also represented my family for a number of years. Mr. Roy D. McCord is fifty-nine years old; he has practiced law in Alabama for thirty-six years and is a highly reputable, capable, and experienced trial lawyer.

Mr. McCord has known Frank Jimmy Snider, Jr., ever since Frank was a little boy. In May, 1956, Frank was arrested in Alabama at the request of the Roanoke, Virginia, authorities on a warrant for statutory rape. As soon as Frank was arrested, he called and sought to employ McCord as his attorney. Frank was injured in October, 1955, during the construction of the General Electric plant in Roanoke County, Virginia. Frank was a structural steel worker. He fell and was injured while engaged in the erection of structural steel. He was hospitalized for sometime in the Lewis-Gale Hospital, Roanoke, Virginia, for head and back injuries.

As the result of the injuries thus sustained, Frank was unable to work until the latter part of February or March, 1956. Consequently, Frank Jimmy Snider, Jr., was without funds to employ and pay for the services of an attorney.

I employed McCord to represent Frank. In view of the nature of the charges in Virginia, Mr. McCord advised that Frank not waive extradition and that we have a mental examination made of Frank in Birmingham, Alabama. I would have followed McCord's advice except for the following facts:

Captain K. E. Allman, head of the detective department of Roanoke, Virginia, came to Gadsden, Alabama, and talked to McCord and me. Frank was in jail in Birmingham. Captain Allman wanted Frank to waive extradition. I wanted to have a mental ex-

amination made of Frank in Birmingham. Captain Allman advised me that it would be a waste of money to have a mental examination of Frank in Alabama inasmuch as Frank had been in the navy. There was a naval base at Norfolk, Virginia, and the Virginia authorities would send Frank to the naval base for a thorough mental examination. Captain Allman said that the examination would be made by fine doctors and without cost to me.

Frank said he was innocent and would waive extradition. I relied on Captain Allman's promise that the Virginia authorities would have Frank examined by the naval doctors at the naval base in Norfolk and we waived extradition.

I employed McCord to represent Frank in Roanoke, Virginia, if it became necessary to try the case. Captain Allman told McCord and me that Frank would have a mental examination at the naval base in Norfolk, Virginia, and if Frank was all right the case in Roanoke would probably be tried in July, 1956.

I came to Roanoke to see Frank on June 9, 1956. I learned, for the first time, that he had already been indicted and the case was set for trial on June 25, 1956. I returned to Gadsden, Alabama, on June 11, 1956, and I went immediately to see McCord. I advised McCord that Frank had already been indicted and the case set for June 25, 1956. McCord replied that it could not be true, that he understood that the case would not be tried until sometime during the July term of court. McCord immediately called by long-distance telephone the prosecuting authorities in Roanoke, Virginia, and he was informed that Frank had been indicted and the case was set for trial on June 25, 1956, and that the case would have to be

tried on that date. McCord requested that the case be continued to a convenient date in July so he could prepare for trial and be present to represent Frank. The request was emphatically denied.

McCord had court engagements, cases set for trial in the courts of Alabama, throughout the month of June, 1956. He sought continuances of the cases in the Alabama courts and tried to rearrange his trial docket so that he could prepare for Frank's trial. McCord finally advised me that due to his engagements in the courts of Alabama he would be unable to prepare for Frank's trial, that the Roanoke, Virginia, authorities would not agree to continue the trial to the July term as he understood Frank would be tried if he was found to be all right by the doctors at the naval base. McCord told me that he would be unable to represent Frank because he could not leave his court engagements in Alabama in order to prepare for the trial on June 25, 1956.

McCord had an assistant in his office, a young lawyer, Mr. Ludgar D. Martin. In desperation and at the suggestion of McCord, I employed Martin to help Frank with his trial. Martin had practiced law only a few years and had little trial experience. He left Alabama by airline on June 24, 1956, arrived in Roanoke, Virginia, that night, and without preparation gave such aid as he could to Mr. Houchins, attorney appointed by the court in its order of June 22, 1956, to defend Frank in the trial that began on June 25, 1956.

On page 5 of the Brief of the Commonwealth filed with the Supreme Court of the United States in opposition to the petition for writ of certiorari,

the Commonwealth represented to the United States Supreme Court as follows:

> "In addition to Mr. Houchins, the petitioner was also represented by Mr. Ludger D. Martin of Gadsden, Alabama, a member of the Alabama Bar. Mr. Martin was counsel of the petitioner's own choosing, from the petitioner's home city in Alabama. * * "

I here and now solemnly state that my son, Frank Jimmy Snider, Jr., did not choose Martin as his counsel, that he had nothing to do with his employment, but that in desperation in an effort to help my son, I employed Martin.

Martin arrived in Roanoke on the night of June 24, 1956; he sought to see Frank that night in the Roanoke city jail and was refused permission to see him. Frank was not acquainted with Martin and did not know him until he walked into the courtroom on the morning of June 25, 1956.

I here and now solemnly state that the refusal of the prosecuting authorities in Roanoke, Virginia, to set the trial for a date in July, as understood by McCord and me, seriously injured and prejudiced my son, Frank, in the defense of the charge against him.

Likewise, the failure of the prosecuting authorities in Roanoke, Virginia, to carry out the promise made to me to have a mental examination made by the naval doctors at the naval base in Norfolk, Virginia, was prejudicial to his defense.

As before stated, I live in Gadsden, Alabama. I employed T. W. Messick, of Roanoke, Virginia, in January of this year to do what he could for Frank. The charges against Frank have been tried and ap-

peals refused by the Supreme Court of Virginia before I called Messick. I have had little, if any, opportunity to talk to Messick, other than by long-distance telephone. The facts as to the employment of McCord and the statements made by the prosecuting authorities of Roanoke, Virginia, were told by me to Mr. Messick late yesterday, July 4, 1957, and today, July 5, 1957. Messick requested that I make an affidavit of the facts and I have done so to the best of my ability.

I solomnly swear that the foregoing statements contained in this affidavit are true to the best of my knowledge and belief.

I feel confident that Roy D. McCord and Ludger D. Martin, attorneys of Gadsden, Alabama, will verify my statements.

(s) Frank J. Snider, Sr.

I further certify that deponent read and affixed his signature to the foregoing in my presence on the date aforementioned, July 6, 1957, at Richmond, Virginia, and that I affixed my official notarial seal hereto.

(s) C. Overton Lee
Notary Public

APPENDIX VII

TELEGRAM OF ROY D. McCORD
Dated July 8, 1957

GADSDEN ALA 8 500 PMC—
1957 JUL 8 PM 6 13

T W MESSICK—
ATTORNEY AT LAW CARE HOTEL JOHN MARSHALL RICH—HAVE JUST READ THE AFFADAVIT OF FRANK J SNYDER SR AS ATTACHED TO YOUR SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS AND SAID AFFADAVIT IS TRUE AND CORRECT WITH REFERENCE TO THE MATTERS SET FORTH THEREIN WHEREIN I AM MENTIONED—
ROY D MCCORD—

APPENDIX VIII

AFFIDAVIT OF LUDGER D. MARTIN
Dated August 20, 1957

Dear Sir:

This is to inform you that Frank Snider did not have an attorney of his choice to represent him in the above styled cause. He wanted Roy D. McCord to represent him and his father employed Mr. McCord to try his case for him. Mr. McCord was unable to go to Roanoke to try the case due to the fact that he was engaged in the trial of cases in Gadsden, Alabama, and informed Mr. Frank Snider, Sr. of this fact. Mr. Snider, Sr. then employed me to go to Roanoke to help defend Frank, which I did. Frank had

never discussed the case with me prior to the day the trial began as the authorities in Roanoke refused to allow me to see Frank the night I arrived there which was the day before the trial.

Since Mr. McCord is an experienced attorney with thirty-six years of practice behind him, since I am inexperienced in the practice of law, since I was not employed and didn't even know that I was going to Roanoke to try this case until a day or two prior to the trial and since Frank Snider did not employ me and did not discuss the case with me, I feel that his rights were seriously jeopardized. There can be no contention on the part of the State that Frank Snider had an attorney of his choice to defend him as Mr. Houchins was appointed by the Court, and I was employed in desperation at the last minute by Frank Snider's father.

Yours very truly,
(s) L. D. Martin

LMD: jc

STATE OF ALABAMA
ETOWAH COUNTY

Before me, the undersigned authority in and for said County and State, personally appeared L. D. Martin, who, after first being duly sworn, deposes and says that all matters and things contained in the foregoing letter are true and correct.

This the 20th day of August, 1957.

(s) Jean Cochran
NOTARY PUBLIC